

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jaimie Vernon	Team: Squad #4	CCRB Case #: 201501992	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/11/2015 8:00 PM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 9/11/2016	EO SOL 9/11/2016	
Date/Time CV Reported Wed, 03/11/2015 8:58 PM	CV Reported At: Precinct	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/19/2015 10:00 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Israel Alcantara	19894	952390	HBXQIRT
2. CPT Kenneth Gorman	00000	921387	HBXQIRT
3. SSA Frank Oshea	04694	906992	ESS 03
4. DTS Daniel Ohanlon	05995	918089	ESS 03
5. DTS Carlos Linares	05515	922650	ESS 03
6. An officer			ESS 03
7. An officer			HBXQIRT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Samson Getachew	09224	953904	HBXQIRT
2. LT Daniel Mufaddi	00000	928822	HBXQIRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Israel Alcantara	Force: PO Israel Alcantara used pepper spray against § 87(2)(b) and § 87(2)(b)	
B. An officer	Off. Language: An officer made remarks to § 87(2)(b) based on sex.	
C. An officer	Discourtesy: An officer spoke rudely to § 87(2)(b) and § 87(2)(b)	
D.DTS Daniel Ohanlon	Discourtesy: Det. Daniel O'Hanlon spoke rudely to § 87(2)(b)	
E.SSA Frank Oshea	Abuse: Sgt. Frank O'Shea entered § 87(2)(b) in the Bronx.	
F.DTS Daniel Ohanlon	Abuse: Det. Daniel O'Hanlon entered § 87(2)(b) in the Bronx.	
G.DTS Carlos Linares	Abuse: Det. Carlos Linares entered § 87(2)(b) in the Bronx.	

Officer(s)	Allegation	Investigator Recommendation
H.SSA Frank Oshea	Abuse: Sgt. Frank O'Shea searched § 87(2)(b) in the Bronx.	
I.DTS Daniel Ohanlon	Abuse: Det. Daniel O'Hanlon searched § 87(2)(b) in the Bronx.	
J.DTS Carlos Linares	Abuse: Det. Carlos Linares searched § 87(2)(b) in the Bronx.	
K. An officer	Abuse: An officer damaged § 87(2)(b) s property.	
§ 87(4-b), § 87(2)(g)		

### Background Information

§ 87(2)(b) and her brother, § 87(2)(b) currently live at § 87(2)(b), § 87(2)(b) in the Bronx, a NYCHA building located in the Mott Haven development. § 87(2)(b) has two young daughters – § 87(2)(b) and § 87(2)(b) ages § 87(2)(b) respectively – who live in the apartment as well. The front door of the apartment opens into a kitchen, which connects to the living room, which itself connects to a hallway whereby one can access the three bedrooms and a bathroom. A partial video of the incident was provided by § 87(2)(b)'s boyfriend (Board Review 01).

### Case Summary

On March 19, 2015, the CCRB received the complaint of § 87(2)(b) and § 87(2)(b) referred by the IAB (OG no. 15-6412). § 87(2)(b) is a complainant and victim, whereas § 87(2)(b) is a non-witnessing complainant. On March 24, 2015, § 87(2)(b) provided a phone statement (Board Review 02) and an in-person statement on April 1, 2015 (Board Review 03). § 87(2)(b) and § 87(2)(b) victims in this incident, both provided in-person statements on April 2, 2015 (Board 04 and Board Review 05). In the interest of brevity and clarity, the civilian statements, the officer statements, and § 87(2)(b)'s video, along with various investigative findings, are merged into the following narrative:

In the evening of March 11, 2015, § 87(2)(b) her two young daughters, and her boyfriend, § 87(2)(b) were inside the apartment in preparation for dinner. § 87(2)(b) and his then-girlfriend, § 87(2)(b) were standing immediately outside the apartment, the door of which was closed, smoking one cigarette, which they intermittently exchanged between them.

Around 8:00PM, PO Israel Alcantara and PO Samson Getachew of Housing Borough Bronx, who were conducting vertical patrols of the building as part of their regular duties, entered the § 87(2)(b) hallway from a stairwell directly next to the apartment and approached § 87(2)(b) accusing her of smoking marijuana. Both officers grabbed § 87(2)(b) who struggled to get out of the officers' grip. § 87(2)(b) opened the door of the apartment and tried to push § 87(2)(b) inside. However, the officers resisted § 87(2)(b)'s efforts to flee, grabbing § 87(2)(b) before she could enter the apartment.

§ 87(2)(b) still inside the apartment, and believing § 87(2)(b) to be in danger, grabbed her and attempted to pull her inside. At this point, § 87(2)(b) who was in the kitchen nearby, learned of what was happening and witnessed the scuffle without taking part. The officers continued to pull § 87(2)(b) off the threshold of the doorway, but § 87(2)(b) managed to escape the officers' grips and fully entered the apartment, hiding in a distant bedroom. § 87(2)(b) (who also managed to get inside the apartment) and § 87(2)(b) attempted to fully close the door, but the officers prevented them from doing so both by pushing the door open and by possibly deploying their batons in an effort to prevent the door from closing. In the midst of the struggle, PO Alcantara's right index finger became caught between the door and the door frame, causing a laceration on that finger. However, none of the civilians claimed to be aware that PO Alcantara's finger was caught in the door, and none heard either officer issue any verbal commands during the scuffle.

In an effort to free his finger from the door, PO Alcantara deployed pepper spray with his free left hand through the open crack of the door (**Allegation A**). § 87(2)(b) and § 87(2)(b) reacted to the pepper spray by momentarily loosening their pressure on the door, allowing PO Alcantara to

take his finger out. Once he had done so, however, § 87(2)(b) and § 87(2)(b) closed and locked the door.

When § 87(2)(b) who was also exposed to the pepper spray, scolded the officers through the door for using pepper spray when her children were inside, either officer said, “Ha ha, tell that bitch to come outside,” referring to § 87(2)(b) (**Allegation B**). As the civilians continued to shout at the officers through the door, either officer said, among other things, “Fuck you” (**Allegation C**).

PO Alcantara and PO Getachew then turned their attention to PO Alcantara’s injured finger. After finding the injury to be relatively minor, they notified their direct supervisor, Lt. Daniel Mufaddi. When Lt. Mufaddi arrived with his driver, PO Michael Maffei, PO Alcantara and PO Getachew explained the situation to them. Lt. Mufaddi then radioed for their captain, Capt. Kenneth Gorman, to come to the scene. When Capt. Gorman arrived, PO Alcantara, PO Getachew, and Lt. Mufaddi explained to him what had occurred. ESU was requested, either by Capt. Gorman or by Lt. Mufaddi under Capt. Gorman’s orders, noting a “barricaded perpetrator” situation in progress.

Sgt. Frank O’Shea, Det. Raymond Flood, Det. Carlos Linares, and Det. Daniel O’Hanlon, all of Emergency Services Unit (ESU) ESS 03, responded to the notification. Det. Flood remained downstairs in an ESU truck, whereas Sgt. O’Shea, Det. Linares, and Det. O’Hanlon suited up in appropriate attire and went inside the apartment building, meeting Capt. Gorman and the other officers, among several backup officers from Housing Borough Bronx and the 40<sup>th</sup> Precinct who had also responded, in the § 87(2)(b) hallway.

After giving a partial explanation of the situation to Sgt. O’Shea, specifically noting that suspects had “barricaded” themselves into the apartment after resisting arrest and after injuring an officer, Capt. Gorman, along with all other non-ESU personnel, were removed away from the area immediately in front of the door of § 87(2)(b) by the ESU officers.

Det. O’Hanlon, Sgt. O’Shea, and Det. Linares then approached the door of § 87(2)(b) and began communicating with the civilians inside, asking them first to open the door. Det. O’Hanlon then asked the civilians who was inside the apartment. § 87(2)(b) informed the officers that there were four adults and two children inside (confirmed by video footage; Board Review 01). Det. O’Hanlon then asked for the civilians to open the door and come outside. § 87(2)(b) complied, opening the door and surrendering himself to Det. Linares and Sgt. O’Shea, who handcuffed him and handed him to nearby patrol officers. After § 87(2)(b) was apprehended, Det. O’Hanlon called out to § 87(2)(b) who was sitting inside the apartment, “Asshole! Get up!” (**Allegation D**).

§ 87(2)(b) then left the apartment and surrendered to Sgt. O’Shea and Det. Linares. Both officers grabbed him, forced him against the wall adjacent to the apartment door, handcuffed him, and gave him to nearby patrol officers.

§ 87(2)(b) then exited the apartment and was also handcuffed by Det. Linares and Sgt. O’Shea. The ESU officers then formed into a stack, with Det. O’Hanlon in front as the bunker, Det. Linares in the middle as the medic, and Sgt. O’Shea in the back, acting as supervisor. The officers then entered the apartment (**Allegation E, F, and G**). The officers entered a bedroom and found § 87(2)(b) inside. Det. Linares and Sgt. O’Shea apprehended her as well, and Sgt. O’Shea removed her from the apartment. He then returned to the apartment, and the officers continued to

search for people. In another bedroom, they found § 87(2)(b)'s children. Sgt. O'Shea removed the children and returned to the apartment again. The officers then performed an exhaustive search of the apartment, looking inside each of the bedrooms, the bathroom, and within several closets for other people (**Allegations H, I, and J**). In the process, several items belonging to § 87(2)(b) and § 87(2)(b) were damaged (**Allegation K**).

After finding no other persons inside the apartment, the ESU officers exited the apartment, allowing § 87(2)(b) and her children to come back inside. § 87(2)(b) and § 87(2)(b) were arrested and taken to the Housing Borough Bronx command, whereas § 87(2)(b) had been released on the scene.

All three defendants were charged with § 87(2)(b). § 87(2)(b) was additionally charged with § 87(2)(b) (Board Review 06). § 87(2)(b) was also additionally charged with § 87(2)(b) (Board Review 07). § 87(2)(b) was only charged with § 87(2)(b) (Board Review 08).

#### **Mediation and Criminal Histories**

This case was deemed unsuitable for mediation because of arrest without DAT, personal injury on the part of § 87(2)(b) and property damage. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

#### **Civilian and Officer CCRB Histories**

This is the first CCRB complaint by any of the civilians.

PO Alcantara has been a member of the service for two years, and this is his first CCRB complaint, though he has since been deemed a subject officer in one other open CCRB complaint. Both Capt. Gorman and Det. Linares have been members of the service for 16 years, and there are no substantiated allegations made against either. § 87(2)(g)

§ 87(2)(g)

Sgt. O'Shea has been a member of the service for 21 years. In CCRB Case # 200601626, he was found to have inappropriately performed a vehicle stop and a vehicle search, and to have issued a retaliatory summons. § 87(2)(g) Det. O'Hanlon has served for 18 years, and there are no substantiated allegations against him. He was previously accused of searching a residence in CCRB Case #200006338, but was exonerated.

#### **Potential Issues**

Despite extensive attempts to locate and contact § 87(2)(b) she was ultimately unavailable to the investigation, and, therefore, her statement could not be obtained (see the Investigative Actions for more details on these attempts).

During her interview, § 87(2)(b) played a video § 87(2)(b) took showing the condition of the apartment after ESU left. While it did not show any officers in the apartment damaging property, it did show clothes and other items strewn across the floor. Despite numerous attempts to obtain a

copy of the video from § 87(2)(b) she has been uncooperative in providing it (see the Investigative Actions).

### **Findings and Recommendations**

#### **Allegation A – Force: PO Israel Alcantara used pepper spray against § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b)

It is undisputed that PO Alcantara deployed pepper spray during the initial incident involving him, PO Getacchew, § 87(2)(b) and § 87(2)(b). PO Alcantara explained that his use of pepper spray was necessitated by the fact that his finger was caught between the door and the door frame and, despite multiple requests to the civilians to stop pushing the door on his finger, they continued to do so (Board Review 14). PO Getacchew § 87(2)(g) § 87(2)(b) insisting that both officers pleaded with the civilians to release the door in order for PO Alcantara to remove his finger, but the civilians refused (Board Review 15).

§ 87(2)(b) and § 87(2)(b) all stated that they did not see anyone's fingers or other body parts caught between the door and the door frame, and that the officers did not issue any verbal commands during that portion of the incident (Board Review 03, Board Review 04, and Board Review 05).

The Line of Duty Injury Report, also prepared by Lt. Mufaddi, stated that PO Alcantara was transported to Lincoln Hospital and found to have suffered a contusion and a laceration to his right index finger. Lt. Mufaddi stated, "PO Alcantara was attempting to affect [sic] arrest of numerous resisting perpetrators when they slammed an apartment door on his right hand injuring his right index finger..." (Board Review 16)

Both Lt. Mufaddi and Capt. Gorman stated that PO Alcantara told them how he suffered his injury, with Lt. Mufaddi requesting EMS to the location (Board Review 17 and Board Review 18). § 87(2)(b) noted that EMS had come to the building to treat PO Alcantara for his injury (Board Review 03).

§ 87(2)(g)

NYPD Patrol Guide Procedure 212-95, "Use of Pepper Spray Devices", states that a uniformed member of force is allowed to use pepper spray in self-defense, among other justifications (Board Review 19)

§ 87(2)(g)

#### **Allegation B – Offensive Language: An officer made remarks to § 87(2)(b) based on sex.**

§ 87(2)(b) and § 87(2)(b) alleged that after the apartment door had been closed, § 87(2)(b) asked the officers why they deployed pepper spray into the apartment. Either PO Alcantara or PO

Getachew allegedly responded, “Tell that bitch to come outside,” referring to § 87(2)(b). None of the civilians could identify which officer made the remark (Board Review 03 and Board Review 05).

Both PO Alcantara and PO Getachew denied making this statement to the civilians and using any other offensive language (Board Review 14 and Board Review 15). There were no other officers present at the scene at the time the alleged remarks were made.

§ 87(2)(g)

**Allegation C – Discourtesy: An officer spoke rudely to § 87(2)(b) and**

§ 87(2)(b)

§ 87(2)(b) alleged that, after the initial incident at the door, an officer told the civilians “Fuck you” through the door (Board Review 04). He assumed that it was either PO Alcantara or PO Getachew. However, as the door was closed, none of the civilians knew for sure which officer supposedly made these remarks.

Both PO Alcantara and PO Getachew denied saying “Fuck you” to the civilians or using any other profanity (Board Review 14 and Board Review 15). There were no other officers present at the scene at the time this alleged remark was made.

§ 87(2)(g)

**Allegation D – Discourtesy: Det. Daniel O’Hanlon spoke rudely to § 87(2)(b)**

In the video that § 87(2)(b) provided the investigation, situated in the living room of the apartment, an officer, standing outside the apartment, can be clearly heard yelling, “Asshole! Get up!” at § 87(2)(b) (Board Review 01, at 08:59). § 87(2)(b) had already left the apartment and was being apprehended by Det. Linares and Sgt. O’Shea. § 87(2)(b) was sitting in a chair in the living room, § 87(2)(g). While § 87(2)(b) did not raise this allegation himself, again, the remark is clearly captured on the video (Board Review 05).

As the officer, a male, is only heard and not seen, the investigation was not readily able to identify the officer. However, when played the video, Sgt. O’Shea immediately recognized the voice saying “Asshole” as that of Det. O’Hanlon. He explained that, as the lead bunker, Det. O’Hanlon, who was positioned closest to the door, in front of the other ESU officers, would have been the officer to call the civilians out in order to be arrested (Board Review 12). Additionally, he recognized Det. O’Hanlon’s voice being the one giving the most commands prior to the offending remark, including, “NYPD! Open the door!” and “...listen to these instructions...put your hands above your heads.” As a way of vouching for his colleague, Sgt. O’Shea also pointed out, “He’s § 87(2)(b) not being cooperative.”

Det. Linares, when played the video, also recognized the voice as being that of Det. O’Hanlon. He also explained that one of Det. O’Hanlon’s responsibilities as the lead (and, in this case, the only) bunker would have been to communicate with the “barricaded perpetrators” and attempt to negotiate a surrender (Board Review 13).

Det. O’Hanlon did not immediately recognize the voice as his own but did not outrightly deny that the voice was his. He claimed to have little to no knowledge of the incident, and recalled more details as § 87(2)(b) s video was played for him (Board Review 11). He also explained that, as the lead bunker, he would have been the one amongst the ESU officers to call the civilians outside in order to be peaceably arrested.

§ 87(2)(g)

The NYPD Patrol Guide states in Section 203-09, “Public Contact”, that members of the service must be “courteous and respectful” when in contact with members of the public (Board Review 20). In the OATH Report and Recommendation No. 590/01, Judge Kramer ruled that police officers are “required to maintain a certain decorum and professionalism in their conduct,” their failure to do so being injurious to both the NYPD’s perception by the public and to its mission to serve and protect the public. Even in “unexpected or volatile situations” where officers are confronted with “individuals who are openly hostile, defiant, or provocative,” officers must exercise restraint and good judgment (Board Review 21).

§ 87(2)(g)

§ 87(2)(g)



**Allegation E – Abuse of Authority: Sgt. Frank O’Shea entered § 87(2)(b) in the Bronx.**

**Allegation F – Abuse of Authority: Det. Daniel O’Hanlon entered § 87(2)(b) in the Bronx.**

**Allegation G – Abuse of Authority: Det. Carlos Linares entered § 87(2)(b) in the Bronx.**

**Allegation H – Abuse of Authority: Sgt. Frank O’Shea searched § 87(2)(b) in the Bronx.**

**Allegation I – Abuse of Authority: Det. Daniel O’Hanlon searched § 87(2)(b) in the Bronx.**

**Allegation J – Abuse of Authority: Det. Carlos Linares searched § 87(2)(b) in the Bronx.**

The investigation revealed the following facts:

After § 87(2)(b) escaped apprehension in the hallway, she, § 87(2)(b) and § 87(2)(b) s two young daughters were the only individuals in the apartment. PO Alcantara and PO Getachew immediately requested that the three perpetrators § 87(2)(b) and § 87(2)(b) exit the apartment. However, none of the perpetrators responded to the request.

Shortly afterward, Capt. Gorman arrived on the scene. He was informed by Lt. Mufaddi (who had arrived a few minutes earlier), as well as by PO Alcantara and PO Getachew, of the following: PO Alcantara and PO Getachew had been conducting a vertical patrol and had found a female § 87(2)(b) smoking marijuana in the hallway. As PO Alcantara and PO Getachew were attempting to apprehend her, two males § 87(2)(b) and § 87(2)(b) pushed and pulled § 87(2)(b) into the apartment which she was standing in front of, and closed the door on the officers. PO Alcantara’s finger became caught between the door and the door frame, causing a laceration to his finger. In response, PO Alcantara deployed his pepper spray, which prompted § 87(2)(b) and § 87(2)(b) to loosen their pressure on the door and allow PO Alcantara to remove his finger. After PO Alcantara removed his finger, § 87(2)(b) and § 87(2)(b) fully closed the door.

After receiving the above information, Capt. Gorman decided to request ESU in order to apprehend the perpetrators. He classified the request for ESU as assistance in regards to “barricaded perpetrators.”

Soon afterwards, the ESU officers – Sgt. O’Shea, Det. O’Hanlon, and Det. Linares – arrived in response to the request for their assistance regarding “barricaded perpetrators.” Capt. Gorman primarily interacted with Sgt. O’Shea, who then relayed the content of the conversation to Det. Linares and Det. O’Hanlon. § 87(2)(g)

At that point, the ESU officers cleared all other officers from the hallway. The ESU officers knocked on the door, requested to know who was in the apartment and that everyone exit the apartment. § 87(2)(b) immediately explained, from behind the door, that there were four adults and two children inside the apartment. He then stated that they would exit the apartment.

Within seconds, § 87(2)(b) opened the apartment door. He, § 87(2)(b) and § 87(2)(b) then exited, were handcuffed by ESU officers, and handed off to patrol officers in the stairwell. None

of the ESU officers confirmed, in any way, if these three individuals were the perpetrators in question.

After the three adults had exited, the ESU officers entered the apartment. They entered one bedroom, where they found § 87(2)(b) Sgt. O'Shea handcuffed her, removed her from the apartment, and handed her off to patrol officers in the hallway. Det. Linares and Det. O'Hanlon remained inside the apartment while Sgt. O'Shea removed § 87(2)(b) into the hallway.

Sgt. O'Shea then re-entered the apartment and he, along with Det. Linares and Det. O'Hanlon, found § 87(2)(b)'s two young daughters in another bedroom. Sgt. O'Shea subsequently removed the two children into the hallway, while Det. Linares and Det. O'Hanlon waited inside the apartment for him to return.

Moments later, Sgt. O'Shea entered the apartment again. All three officers then continued to search the entire apartment, looking under beds, in closets, and other places where individuals could hide. The officers admitted that they had no concrete or definite reason to believe that other individuals were inside the apartment. They, instead, justified the continued search as a "secondary [search]" and "standard procedure."

Nothing of substance was found and no other individuals were discovered in the apartment. As a result, all three ESU officers left the scene. At no point was a search warrant in effect or requested at the time of the incident.

According to People v. Skinner, 284 A.D.2d 906 (4<sup>th</sup> Dept. – 2001) (Board Review 29), officers are justified in entering a premise when arrest activity (for either a misdemeanor or a felony) is initiated in a public place and the defendant attempts to defeat arrest by fleeing into said premise, thereby imposing a barrier.

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

When evaluating police action, such as a search of a location, it must be considered whether or not the intrusion was justified in its inception and whether or not it was reasonably related in scope to the circumstances which rendered its initiation permissible. People v. Alba, 81 A.D. 2d 345 (1<sup>st</sup> Dept. – 1981); People v. DeBour, 40 N.Y.2d 210 (1976) (Board Reviews 30 and 31).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation K – Abuse of Authority: An officer damaged § 87(2)(b) s property.**

In a follow-up statement on April 21, 2015, § 87(2)(b) alleged that, after she returned to her apartment after the incident, she found that several of her mother’s miniatures were broken. She also found a smashed mirror, a broken curtain rod, and a broken curtain. She observed that several of the boxes that she placed in a storage area in the hallway had holes poked in them. She had not seen these holes before, and surmised that they were made by the ESU officers (Board Review 27).

Each ESU office denied knowingly or intentionally damaging any property in the apartment (Board Review 11, Board Review 12, and Board Review 13). Det. Linares admitted that incidental property damage sometimes occurs as part of an ESU search, and conjectured that either he or another officer might have ripped a curtain by accident, but he did not believe anything was damaged during this incident.

The video that § 87(2)(b) provided during her interview showing the state of the apartment after the entry did not show any damaged or broken items. Moreover, she did not furnish these broken items to the CCRB, either in actuality or in photographs.

§ 87(2)(g) [Redacted]  
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§ 87(2)(g), § 87(4-b) [Redacted]  
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§ 87(2)(g), § 87(4-b)

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Pod: \_\_\_\_\_

Pod Leader: \_\_\_\_\_  
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Attorney: \_\_\_\_\_  
Title/Signature                      Print                      Date